

City of Detroit

CITY COUNCIL

DAVID D. WHITAKER

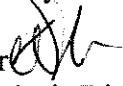
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TO: The Honorable City Council

FROM: David Whitaker 
Research & Analysis Division Staff

DATE: January 29, 2007

RE: Petition of Sylvia M. Kirkland, (#0757) regarding the purchase of vacant lot located a 17351 Riopelle Street

The Research & Analysis Division (RAD) was requested by the Honorable City Council to determine if it is possible for individuals to adversely possess property held by a governmental entity.

The doctrine of adverse possession of land means that title to real property can be acquired as a result of its use or enjoyment over a specified period of time.¹ In Michigan, the statutory period for a claim of adverse possession is fifteen years. The possession must also satisfy other elements to be successful. For example, it must be open, obvious, hostile, continuous and uninterrupted to satisfy the requirements for adverse possession.

It is well settled that an individual cannot adversely possess land held by a municipality, absent express statutory authority.² In 1914, the Michigan Supreme Court held that the "immunity" of governmental entities from adverse possession claims was established in Michigan by 1907 P.A. 46.³ Prior to the enactment of the governmental immunity statute, Michigan followed the minority position that adverse possession claims could be established against a municipality.⁴ Therefore, a private party can establish adverse possession against the government if the adverse possession took place prior to 1907.⁵

¹ Black's Law Dictionary, 8th Edition (West 2004).

² Caywood v. Dep't Natural Resources, 71 Mich.App. 322, 248 N.W.2d 253 (1976). Successful claim for adverse possession against the State where the statutory period was satisfied prior to the enactment of the 1907 statute.

³ Pastorino v. City of Detroit, 182 Mich. 5, 148 N.W. 231 (1914).

⁴ In Howard v. Village of Berrien Springs, 311 Mich. 567, 19 N.W.2d 101 (1945), the Michigan Supreme Court concluded that the plaintiff had successfully established a claim of adverse possession 15 years prior to the enactment of the immunity statute and was entitled to the land under the minority position.

⁵ Hill v. Houghton Twp., 109 Mich.App. 614, 311 N.W.2d 429 (1981).

A claim for adverse possession of land against the City is also likely to fail in that a strong policy rationale exists against turning over land held in public trust to a private owner under a claim of adverse possession. In the absence of legislation providing otherwise, the weight of authority is to the effect that property held by a city in trust for public use cannot be acquired by adverse possession.⁶

⁶ MCL § 600.5821; Gorte v. Dep't of Transportation, 202 Mich.App. 161, 507 N.W.2d 797 (1993); Mackinac Island Dev. Co. v. Burton Abstract & Title Co., 132 Mich.App. 504, 349 N.W.2d 191 (1984); Young v. Thendara, Inc., 328 Mich. 42, 43 N.W.2d 58 (1950); Staub v. Tripp, 248 Mich. 45; 226 N.W. 667 (1929); Grand Rapids Trust Co. v. Doctor, 222 Mich. 248, 192 N.W. 641 (1923); Merritt v. Westerman, 165 Mich. 535, 131 N.W. 66 (1911).